

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CROTON WATCH CO., INC.,

Plaintiff,

v.

NATIONAL JEWELER MAGAZINE, INC.  
and TESLAR INSIDE CORPORATION.

Defendants.

Civil Action No.:  
06 CV 662 (GD)

**DECLARATION OF ALEXANDER BERGER**

I, **ALEXANDER BERGER**, hereby declare as follows:

1. I make this Declaration based upon my own personal knowledge of the facts set forth herein.
2. I am a jeweler and been involved in the jewelry trade for over three decades.
3. I run a company known as Exclusive Enterprises, Inc.
4. Among the many different jewelry items that Exclusive Enterprises sells are various watch lines.
5. Exclusive Enterprises is the primary Northeast distributor for Croton watches.
6. In early January, 2005, I read an article in the National Jewelry Magazine describing a lawsuit by Teslar against Croton. I was shocked by this article because it stated that Philip Stein Teslar won a trademark infringement case against Croton which, according to the article, involved the judge actually ruling that Croton merchandise infringed on the trademark of a Teslar product.

7. This situation alarmed me greatly, because I knew that customers throughout the country avidly read National Jeweler Magazine.

8. I immediately called the owner of Croton, David Mermelstein, to investigate the situation. Mr. Mermelstein vehemently explained that in fact, there was no trial, nor any evidentiary hearing before any judge. Mr. Mermelstein further explained that Croton had merely agreed to withdraw one poorly performing watch line because of the filing of the lawsuit by Teslar, but expressly stated to the judge and in a settlement agreement that the product Croton was selling was not an infringement.

9. Nonetheless, since a few of my customers also called to ask me about the article, I determined that in order to protect my own reputation, I would not push Croton watches for a while.

10. In general, I have seen the demand for Croton watches decrease over the course of the past eight months.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_

3/10/06

  
ALEXANDER BERGER